



May 9, 2000

Lieutenant Arturo Valdez  
Central Record Division  
City of McAllen Police Department  
1501 Pecan Boulevard  
McAllen, Texas 78501

OR2000-1802

Dear Lieutenant Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135195.

The McAllen Police Department (the “department”) received a written request for a particular offense report. You contend that the requested information is made confidential under section 261.201 of the Family Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.<sup>1</sup> We note at the outset that you did not submit the requested records to this office within fifteen business days of the department’s receipt of the records request.<sup>2</sup> Consequently, you failed to comply with the requirements of section 552.301(a) of the Government Code.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office within fifteen business days of receipt of an information request “a copy of the specific information requested, or . . . representative samples of the information if a voluminous amount of information was requested.” Gov’t Code § 552.301(e)(1)(D). Otherwise, the requested information “is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302.

---

<sup>1</sup>Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

<sup>2</sup>You initially submitted other, unrelated documents. This letter ruling does not address the public nature of the documents not sought by the requestor.

On the other hand, a demonstration that information comes under the protection of section 552.101 of the Government Code constitutes a compelling reason for non-disclosure. *See* Open Records Decision No. 150 (1977). The information at issue pertains to the department's investigation of the possible injury to a child. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

The confidentiality conferred on the offense report by section 261.201 of the Family Code constitutes a "compelling" reason for non-disclosure that overcomes the legal presumption that the report is public information. *See* Gov't Code § 552.302; Open Records Decision No. 150 (1977). You have not informed this office of any rules the department has adopted that would permit access to the requested records. Because the information at issue pertains to an investigation of injury to a child, this office concludes that the department must withhold the requested offense report in its entirety pursuant to section 261.201 of the Family Code. *But see* Fam. Code § 261.201(b) (provision for court ordered access), (f) (limited right of access to records held by Department of Protective and Regulatory Services).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.


This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Kathryn S. Knechtel".

Kathryn S. Knechtel  
Assistant Attorney General  
Open Records Division

KSK/RWP/ljp

Ref: ID# 135195

Encl. Submitted documents